

Barry N. Guterman, Esq. (BG6410)  
Barry N. Guterman & Associates, P.C.  
Attorneys for Defendant  
Los Angeles El Paso Express Lee, Inc.  
60 East 42nd Street, 46th Floor  
New York, New York 10165  
(212) 983-1466

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ASUSTEK COMPUTER, INC.

Plaintiff,

v.

SHANGHAI EASTERN FUDART TRANSPORT  
SERVICES CO., LTD., CHINA EASTERN AIRLINES  
CO., LTD., CHINA CARGO AIRLINES, AIR CHINA,  
DART EXPRESS (TAIWAN) LTD., ULTRA AIR  
CARGO, INC., TRUXTON LOGISTICS CORP. and LOS  
ANGELES EL PASO EXPRESS LEE, INC.,

Defendants.

**ECF Case**

**08 CV 02770  
(Judge McMahon)**

**LOS ANGELES EL PASO EXPRESS INC.'S ANSWER AND AFFIRMATIVE  
DEFENSES TO CHINA CARGO AIRLINES' CROSS-CLAIMS**

Defendant, Los Angeles El Paso Express Lee, Inc. ("Lee") by its attorneys, Barry N. Guterman & Associates, P.C., for its Answer and Affirmative Defenses to Defendant China Cargo Airlines ("China Cargo") Cross-Claims, alleges upon information and belief:

19. Lee denies the allegations contained in paragraph 19 of the Cross-Claims.
20. Lee denies the allegations contained in paragraph 20 or the Cross-Claims.
21. Lee denies the allegations contained in paragraph 21 of the Cross-Claims
22. Lee denies the allegations contained in paragraph 22 of the Cross-Claims

23. Lee denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 23 of the Cross-Claims and therefore denies same and leaves China Cargo to its proof.

**AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE**

24. In the event that said shipment moved subject to any statutory or contractual limitations of liability, either specifically agreed to or contained in any applicable law, tariffs, circulars, and/or governing publications, the plaintiff and/or China Cargo may not recover in excess of such limitations.

**AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE**

25. To the extent that the plaintiff and/or China Cargo failed to meet the minimum filing requirements of filing a proper written claim within the time prescribed, this lawsuit is time barred.

**AS AND FOR A THIRD  
AFFIRMATIVE DEFENSE**

26. The complaint and cross-claims fail to state a claim against Lee upon which relief may be granted.

**AS AND FOR A FOURTH  
AFFIRMATIVE DEFENSE**

27. The bill of lading, tariffs and classifications, and the governing publications do not contemplate responsibility for special damages. To the extent that plaintiff and/or China Cargo seeks recovery for special damages, Lee is not responsible for such amounts.

**AS AND FOR A FIFTH  
AFFIRMATIVE DEFENSE**

28. Lee is not responsible or liable for any negligence which was a proximate cause of any alleged incident or damages of which plaintiff and China Cargo allege.

**AS AND FOR A SIXTH  
AFFIRMATIVE DEFENSE**

30. Plaintiff's state law claims are preempted by federal law, which govern this matter.

**AS AND FOR A SEVENTH  
AFFIRMATIVE DEFENSE**

31. Plaintiff failed to mitigate its damages, if any, and, therefore, plaintiff and China Cargo are barred from recovering any such damages from Lee.

**AS AND FOR AN EIGHTH  
AFFIRMATIVE DEFENSE**

32. Plaintiff's complaint and China Cargo's cross-claims should be dismissed, as the United States District Court for the Southern District of New York is an improper venue and/or the action should be transferred pursuant to 28 U.S.C. §1404.

**AS AND FOR A NINTH  
AFFIRMATIVE DEFENSE**

33. Plaintiff's complaint and China Cargo's cross-claims should be dismissed pursuant to the doctrine of forum non conveniens.

WHEREFORE, Defendant Los Angeles El Paso Express Lee, Inc. demands judgment be entered herein: (1) dismissing China Cargo's cross-claims against it with prejudice, together with interest, costs, disbursements and attorney fees incurred herein; and (2) for such other further and/or different relief as this court may deem just and proper.

Dated: New York, New York  
June 23, 2008

By: /s/ Barry N. Guterman  
Barry N. Guterman, Esq. (BG6410)  
Barry N. Guterman & Associates, P.C.  
60 East 42nd Street, 46th Floor  
New York, New York 10165  
Phone: (212) 983-1466  
Fax: (212) 983-1229

Attorneys for Defendant  
Los Angeles El Paso Express Lee, Inc.

To: Edward C. Radzik, Esq.  
Matthew Todd Loesberg, Esq.  
McDermott & Radzik, LLP  
Wall Street Plaza  
88 Pine Street – 21<sup>st</sup> Floor  
New York, New York 10005-1801  
(212) 376-6400

Attorneys for Plaintiff

Andrew J. Harakas, Esq.  
Clyde & Co. US LLP (NYC)  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174

Attorneys for Defendants  
China Eastern Airlines Co., Ltd.  
China Cargo Airlines, Ltd.  
Air China, Ltd.

Shanghai Eastern Fudart Transport Services Co., Inc.  
5481 W. Imperial Highway, Suite 316  
Los Angeles, California 90045

Dart Express (Taiwan) Ltd.  
Room A& D 20/F  
International Trade Building  
No. 388 Hubin South Road, 361004  
Xiamen, China

Ultra Air Cargo, Inc.  
555 Isis Avenue  
Inglewood, California 90301

Truxton Logistics Corp.  
P.O. Box 83104  
Los Angeles, California 90045

LE-2901.AAD.Cross Claims China Cargo